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INTRODUCTION

This course deals with the sale of land, and mortgages. These two topics do not share much common ground of legal doctrine; the justification for combining them is a functional one; in practice they are often found together and must be considered together. These materials consist mainly of cases and legislation. This introduction is intended to show you some of the common documents, and to give you a fleeting glimpse at a small part of the business background of the course. It is a description of a fictitious purchase of a house. Considerable liberties have been taken with practice but for the sale of clarity and convenience; the correspondence and documents have been simplified and distorted in a fashion which might horrify an experienced conveyancer. Nevertheless, it was not for him that this introduction was prepared, and its purpose is not to teach you his skills.

We begin with Cycil Celler, who decided to sell his house. Why he reached this decision we don't particularly care. He may have been shifted by his employer to another city; he may have been a young man with a growing family and needed a larger house; or he may have been older, his children may have grown up and left home, and he may have wished to move into an apartment. His house was worth about \$30,000.00, and was subject to a mortgage under which about \$15,600.00 was owed. He decided to retain a real estate agent to sell it for him. A few owners sell their own properties, to avoid paying a commission, but most properties are sold by agents. Most agents are members of local real estate boards, and their services are generally available only on the terms of standard form listing agreements.

After some time and effort with which we need not concern ourselves, the agent found eager purchasers, John and Judith Househunter. An agreement was entered into on June 17th, 1965, which contemplated completion, or closing, on September 15th, 1965. Some purchases, particularly those of consumer goods, are instantaneous transactions, but purchases of land always involve a delay from the time the agreement is entered into and the time the deal is closed. The reasons are fairly obvious. For example, the vendor may need time to find some new accommodations, the purchaser may need time to find money, both may need time to arrange for moving, and their lawyers will certainly need time to perform the various technical tasks which need to be done. The purchase price was \$30,000.00; John and Judith were to assume the existing mortgage, and pay the balance, about \$14,400.00, in cash. They paid a deposit of \$1,500.00, which was to be held by the agent. The remainder about \$12,900.00, was due on closing. John and Judith did not have \$12,900.00; they had saved about \$6,000.00, and they counted on borrowing the rest, about \$7,000.00, from Judith's mother, Mrs. J.B. Kindly. The agent, after having sent copies of the agreement to the lawyers who were going to act for John and Judith, disappears from this story and this course. If we had more time we wonder about his claim for his commission. There are a good number of cases dealing with this question, and problems are hardly uncommon in practice, but I hope I can assume you are well enough armed by courses in Contract and Agency to deal with them.

We now turn to the lawyers' offices, and first the firm acting for John and Judith. They were also acting for Mrs. Kindly, and there was therefore a possibility of a conflict in interest; the firm's position was explained in a letter to Mrs. Kindly. With respect to John and Judith, they began by giving instructions concerning the deed to the firm acting for Cyril. Then they searched the title to the house, and made objections. As well, inquiries were made concerning building restrictions imposed by by-law, and Municipal taxes. In so far as the firm acted for Mrs. Kindly, the search of title and the inquiries into zoning and taxes killed two birds with one stone, for a mortgagee is just as concerned with these matters as a purchaser. They prepared a mortgage, had it executed by John and Judith, and requested Mrs. Kindly to send the money for the loan.

Now, the lawyers acting for Cyril. They wrote to the mortgagee requesting a statement of the amount which would be due on the closing date, and a copy of the survey. Then they prepared a deed, and a statement of adjustments showing the amount due on closing. Copies of both were sent to John and Judith's lawyers, and when the deed was approved it was executed by Cyril. The objections to title were answered.

The deal was now ready for the ritual of closing. The memoranda to the students include more detail than is usual, in order to suggest to you what happened. Afterwards, both firms reported to their respective clients. A few more details were tied up, and everyone lived happily every after.

So far, I have said nothing about one very important matter, insurance. I shall say very little, simply because it is dealt with in another course. Most buildings are insured against fire; all mortgaged buildings are, simply because insurance is a protection which mortgagees demand and get. Cyril's home was insured by a policy which had about a year and a half to run. This policy was assigned to the purchasers and credit was given to Cyril in the statement of adjustments for the value of the remaining coverage. Of course, insurers are entitled to some discretion concerning the risks they insure, and therefore the insurance company was requested to consent to the assignment. I suppose it is fairly clear that until it did consent, the purchasers were not protected.